



ALAN WILSON  
ATTORNEY GENERAL

May 8, 2012

The Honorable Harvey S. Peeler, Jr.  
Senator, District 14  
213 Gressette Senate Office Building  
Columbia, SC 29202

Dear Senator Peeler:

By way of background in a letter to this office, you inform us about an alleged incident during the Presidential Preference Primary in which a Cherokee County voter, voting absentee, made a video of his vote and then posted it on YouTube.

As you note, S.C. Code Ann. §7-25-100(A) provides, in pertinent part, that

[i]t is unlawful in any election for a voter to: (1) allow his ballot to be seen by a person, except as provided by law . . .

You request an opinion of this office to address whether §7-25-100 prohibits the reproduction of a ballot by devices such as a cell phone, video camera, camera, or iPad.<sup>1</sup>

The State has a legitimate interest in preserving the integrity of its election process. See Florence County Democratic Party by Moore v. Johnson, 281 S.C. 218, 314 S.E.2d 335, 337-338 (1984) [citing Bullock v. Carter, 405 U.S. 134 (1972)]. Every voter in South Carolina has the right to vote a secret ballot. See Corn v. Blackwell, 191 S.C. 183, 4 S.E.2d 254 (1939) [holding ballot secrecy was violated when numbering system for ballots and voter sign-in lists could be used to identify a particular voter's ballot]; State ex rel. Birchmore v. State Bd. of Canvassers, 78 S.C. 461, 59 S.E. 145 (1907) [holding ballot secrecy was violated when voters were required to place their ballots in “for” and “against” boxes that plainly revealed their choice].

In fact, article II, §1, of the South Carolina Constitution provides that:

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<sup>1</sup>Any person violating this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than one year. See §7-25-100(C).

[a]ll elections by the people shall be by secret ballot, but the ballots shall not be counted in secret. The right of suffrage, as regulated in this Constitution, shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or improper conduct.

In addition, article II, §10, of the South Carolina Constitution not only permits, but mandates that the Legislature to regulate and provide for elections. Among those things required is that the Legislature “. . . insure secrecy of voting . . .”<sup>2</sup> Pursuant to §7-13-130, the Legislature has provided that “the secrecy of the ballot shall be preserved at all times.” Ultimately, this secrecy requirement preserves the integrity of an election and its results, which is critical to our democratic form of government. *Cf. George v. Municipal Election Commission of City of Charleston*, 335 S.C. 182, 516 S.E.2d 206 (1999) [finding the use of ballots that are not designed to be folded violates the constitutional and statutory right to a secret ballot]; *State ex.rel. Edwards v. Abrams*, 270 S.C. 87, 240 S.E.2d 643 (1978) [holding statute which would allow husband and wife to enter a voting booth together and discuss their ballot is unconstitutional in violation of constitutional provisions regarding secrecy of voting].

The criminalization of certain activities, among them a voter allowing his/her ballot to be seen by a person, clearly suggests Legislative intent in §7-25-100 not just to protect electors from any treatment of the ballot inconsistent with the right to vote, but also to serve the broader purpose of imposing ballot secrecy. It is thus the opinion of this office that any voter who allows his/her ballot to be seen, through any medium, with the apparent intention of letting it be known how he/she is about to or has voted, may be found to have violated the constitutional and statutory mandate for ballot secrecy in this State.

We note, however, that this office has consistently advised that the judgment call as to whether to prosecute a particular individual is warranted or is on sound legal ground in a particular case is a matter within the discretion of the local prosecutor. *Ops. S.C. Atty. Gen.*, April 6, 2011; October 29, 2004; April 20, 2004; February 3, 1997. The prosecutor is the person on the scene who can weigh the strength or weakness of an individual case. *Ops. S.C. Atty. Gen.*, June 28, 2011; August 14, 1995. Thus, while this office has provided to you the relevant law in this area, we must defer to the prosecutor’s ultimate judgment as to whether or not to prosecute an individual in question in a given case under particular circumstances.

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<sup>2</sup>The provision reads as follows:

[t]he General Assembly shall provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting, establish procedures for contested elections, and enact other provisions necessary to the fulfillment and integrity of the election process.

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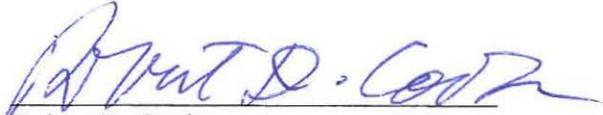
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General